

### **REMARKS/ARGUMENTS**

In this amendment, claims 1, 23, 24, 34, 58, 59, 64, 65, and 70 are being amended, claims 22, 25, 54, 55, and 60 are being canceled, and claims 77-82 are being added. Thus, claims 1-21, 23, 24, 26-53, 56-59, and 61-82 will be pending after entry of the amendment, although claims 4-7, 10, 13-16, 39-42, 44-46, and 48-51 will remain withdrawn from consideration. Reconsideration and allowance of this application is respectfully requested in view of the amendments above and the remarks below.

In an effort to expedite prosecution, claim 1 is being amended to incorporate the subject matter of dependent claim 25. Claims 23 and 24 are being amended to insert “second” before “motion threshold” to avoid potential confusion with the motion threshold now referred to in amended claim 1. Claim 23 is also being amended to insert the inadvertently omitted words “breathing event” after “an obstructive disordered”. No new matter has been added.

Independent claim 34 is being amended to substantially incorporate the subject matter of claim 60. Claims 58 and 59 are being amended to insert “second” before “motion threshold” to avoid potential confusion with the motion threshold now referred to in amended claim 34. Claim 64 is being amended to delete the extraneous word “a”. Claim 65 is being amended to correct the plural “are” to the singular “is” in conformance with the subject “at least one”. No new matter has been added.

Independent claim 70 is being amended to include verbiage similar to that of original claim 25. No new matter has been added.

New claims 77-82 are being added to encompass additional inventive subject matter. New claims 77 and 78 depend from claim 34 and specify that the disordered breathing event comprises apnea and hypopnea, respectively. Support can be found e.g. in original claims 6 and 7. New independent claim 79 is a method counterpart to amended system claim 34. New claim 80 depends from claim 79 and further specifies storing information associated with the disordered breathing event. Support can be found e.g. in original claim 27. New independent claim 81 is a system counterpart to amended method claim 1. New claim 82

depends from claim 81 and further recites a memory coupled to the disordered breathing classification processor and configured to store information about the disordered breathing event. Support can be found e.g. in original claim 66. No new matter has been added.

Claims 22, 25, 54, 55, and 60 are being canceled as no longer necessary.

### **Allowable Subject Matter**

The Examiner indicated claims 25 and 60 would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

Applicants acknowledge with appreciation the Examiner's indication of allowability. To expedite patent protection for these technologies, Applicants have incorporated the subject matter of claim 25 into its base claim 1, and subject matter from claim 60 into its base claim 34, consequently canceling claims 25 and 60. Independent claim 70 is also being amended to include subject matter substantially similar to that of original claim 25, but in a system claim, and is thus submitted to be allowable. New independent claim 79 is being added as a method counterpart to amended system claim 34, and new independent claim 81 is being added as a system counterpart to amended method claim 1, and are thus both submitted to be allowable for similar reasons.

### **Claim rejections - § 102**

The Office Action rejected claims 1-3, 8, 9, 11, 12, 20-22, 27-38, 43, 47, 53-57, 63, and 65-76 under 35 U.S.C. §102(e) based on U.S. Patent 6,641,542 (Cho et al.), hereinafter "Cho".

The claim amendments above render these rejections moot. Withdrawal of the rejections is respectfully requested.

### **Claim rejections - § 103**

The Office Action rejected claims 17-19 under 35 U.S.C. §103(a) as being unpatentable over Cho in view of U.S. Publication No. 2003/0195571 (Burnes) and U.S. Patent 6,547,743 (Brydon). Claim 64 was rejected under 35 U.S.C. §103(a) as being

unpatentable over Cho in view of Brydon. Claim 62 was rejected under 35 U.S.C. §103(a) as being unpatentable over Cho in view of Burnes.

The claim amendments above render these rejections moot. Withdrawal of the rejections is respectfully requested.

To the extent Applicants have not responded to any characterization by the Examiner of the asserted art or of Applicants' claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, Applicants wish to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary. Applicants reserve the right to address in detail any such assertions or statements in future prosecution.

#### **Request for Rejoinder**

Applicants respectfully request rejoinder of all pending withdrawn claims in view of the allowability of independent claims 1 and 34, as explained above. Reference is made to the rejoinder practice set forth in MPEP § 821.04(a).

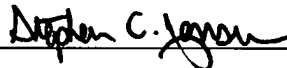
CONCLUSION

For the foregoing reasons, the application and all pending claims 1-21, 23, 24, 26-53, 56-59, and 61-82 are submitted to be in condition for allowance, the early indication of which is earnestly solicited. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

Date: June 9, 2008

By:   
Stephen C. Jensen  
Reg. No. 35,207